NOTIFICATION.

(LAW DEPARTMENT)

No LAW 108 LCA 62, Bangalore, dated 5th November 1962

Ordered that the Converts' Marriage Dissolution Bill, 1962 (87 of 1962), which has been published in the *Gazette of India*, Extraordinary, Part II, Section 2, dated the 4th September 1962, be republished in the *Mysore Gazette*, for general information.

By Order and in the name of the Governor of Mysore,

21 S. SRIPADARAJ, *Under Secy. to Govt. L. D.*

LOK SABHA

The following Bill was introduced in Lok Sabha on the 4th September, 1962 —

BILL No 87 OF 1962

A Bill to provide for the dissolution under certain circumstances of marriages of converts and for matters connected therewith

BE IT enacted by Parliament in the Thirteenth Year of the Republic of India as follows —

CHAPTER I

PRELIMINARY

1. Short title and extent.—(1) This Act may be called the Converts' Marriage Dissolution Act, 1962.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

2. Definitions.—In this Act, unless the context otherwise requires,—

(*a*) "conversion" means change of religion and includes renunciation of religion,

(*b*) "district court" means, in any area for which there is a city civil court, that court, and in any other area the principal civil court of original jurisdiction, and includes any other civil court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act,

(*c*) "India" means the territories to which this Act extends, and

(*d*) "minor" means a person who has not completed the age of eighteen years.

CHAPTER II

EFFECT OF CONVERSION ON MARRIAGES

A.—Effect of conversion generally

3. Conversion by itself not to dissolve marriage.—Notwithstanding anything contained in any other law for the time being in force, the conversion of a husband or wife shall not by itself operate to dissolve his or her marriage.

4. Prohibition of bigamy.—Every person who, during the life-time of his or her spouse by a marriage contracted before conversion, contracts any other marriage after his or her conversion, shall be subject to the penalties provided in section 494 and section 495 of the Indian Penal Code (45 of 1860), for the offence of marrying again during the life-time of a wife or a husband, and the marriage so contracted shall be void

5. Dissolution of marriage on ground of conversion not permitted except under Act.—No marriage shall be dissolved at the instance of a spouse on the ground of the conversion of that spouse, except as provided in this Act

B.—Dissolution of marriage on refusal to cohabit after conversion

6. Dissolution of marriage on conversion, where the other party refuses to cohabit.—(1) If in consequence of the conversion of a husband or a wife, the other spouse, not being a minor, repudiates, or refuses to cohabit with, such husband or wife, the marriage, whether solemnized before or after the commencement of this Act, may, on a petition presented by such husband or wife, be dissolved by a decree of divorce on the ground of such repudiation or refusal.

(2) No petition shall be entertained under this section unless at the time of the presentation of the petition a period of not less than two years has elapsed since the conversion of the petitioner

7. Re-marriage of divorced persons.—Where a decree of dissolution of marriage under this Act has been passed, and the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed and the decree of dissolution has become final, but not sooner, either party to the marriage may marry again.

CHAPTER III

JURISDICTION AND PROCEDURE

8. Court to which petition should be made —Every petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction—

(*a*) the respondent is residing at the time of the presentation of the petition, or

(*b*) the marriage was solemnized, or

(*c*) the husband and wife last resided together, or

(*d*) the petitioner is residing at the time of presentation of the petition, provided the respondent is, at that time, residing outside India.

9. Jurisdiction of Indian courts.—No court shall entertain any petition for the dissolution of any marriage under this Act unless the parties are domiciled in India at the time of the presentation of the petition.

10 Contents and verification of petition —(1) Every petition presented under this Act shall state distinctly the facts of the case and shall also state that there is no collusion between the petitioner and the other party to the marriage.

(2) The statements contained in every such petition shall be verified by the petitioner or some other competent person in the manner required by law for the verification of plaints and may, at the hearing, be referred to as evidence

11. Application of code of civil procedure.—Subject to the other provisions contained in this Act and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908 (5 of 1908).

12 Maintenance *pendente lite*, **and expenses of proceedings** —Where in any proceeding under this Act, it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as having regard to the petitioner's own income and the income of the respondent, may seem to the court to be reasonable

13. Permanent alimony and maintenance —(1) Any court exercising jurisdiction under this Act on the application of any person, may, at the time of passing any decree of dissolution of marriage or at any time subsequent thereto, order that the petitioner shall, while the respondent remains un-married, pay to the respondent for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the

respondent as, having regard to the petitioner's own income and other property, if any, the income and other property of the respondent and the conduct of the parties, may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the petitioner

(2) Where a petition for dissolution of a marriage under this Act has been filed by the husband, the court shall not pass a decree of dissolution of the marriage without passing an order under sub-section (1) unless, for special reasons to be recorded, the court thinks that such order is unnecessary.

(3) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(4) If the court is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it shall rescind the order.

14. Disposal of property.—(1) In any proceeding under this Act, the court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of the marriage, which may belong jointly to both the husband and the wife.

(2) In any proceeding under this Act in which the court pronounces a decree for dissolution of marriage the court may inquire into the existence of ante-nuptial or post-nuptial settlement made on the parties whose marriage is the subject of the decree, and may make such orders, with reference to the application of the whole or any part of the property so settled (whether the settlement is for the benefit of the children of the marriage or of the parties to the marriage or both), as the court thinks fit

(3) The court shall not make any order under sub-section (2) for the benefit of the parents or either of them at the expense of the children.

15. Custody of children.—(1) Subject to the provisions of sub-section (2), in any proceeding under this Act, the court may from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make, from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the court may also from time to time revoke, suspend or vary any such orders and provisions previously made.

(2) Where a marriage is dissolved under this Act on the petition of any person, the respondent shall be entitled to the custody of the minor children of the marriage, unless the court, by reason of the special circumstances of the case, deems it just to make an order to the contrary.

16. Enforcement of decrees and orders —All decrees and orders made by the court in any proceeding under this Act shall be enforced in the like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction for the time being are enforced.

17. Appeals from decrees and orders.—All decrees and orders made by the court in any proceeding under this Act shall be appealable as decrees of the court made in the exercise of its original civil jurisdiction, and such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in the exercise of its original civil jurisdiction

Provided that there shall be no appeal on the subject of costs only.

CHAPTER IV

MISCELLANEOUS.

18. Rules by the High Court —The High Court may, by notification in the Official Gazette, make such rules consistent with the provisions contained in this Act as it may consider expedient for the purpose of carrying into effect the provisions of this Act.

19. Proof of refusal.—In any proceeding under this Act, proof of the respondent's refusal or voluntary neglect to cohabit with the petitioner, after the petitioner's conversion and after knowledge thereof by the respondent, shall be sufficient evidence of such repudiation or refusal being in consequence of the petitioner's conversion, unless some other sufficient cause for such repudiation or refusal be proved by the respondent.

20 Dissolution of marriage not to affect status or right of children —The dissolution of a marriage under this Act shall not operate to deprive the respondent's children (if any) by the petitioner of their status as legitimate children or of any right or interest which they would have had according to the personal law applicable to them, by way of maintenance, inheritance or otherwise, in case the marriage had not been dissolved under this Act

21. Provision regarding persons to whom the Hindu Marriage Act applies both before and after conversion —For the purposes of this Act, a person to whom the Hindu Marriage Act, 1955 (25 of 1955), applies, shall not be deemed to have been converted to another religion if, even after such conversion, the said Act continues to apply to such person

22. Savings for marriages solemnised under the Special Marriage Act —Nothing in this Act applies to any marriage solemnised under the Special Marriage Act, 1954 (43 of 1954).

23 Repeal.—(1) The Converts' Marriage Dissolution Act, 1866 (21 of 1866), and any enactment corresponding to that Act in force in any area immediately before the commencement of this Act, are hereby repealed

(2) Nothing contained in this section shall affect any proceeding under the Converts' Marriage Dissolution Act, 1866 (21 of 1866), or any such corresponding enactment, pending at the commencement of this Act, and any such proceeding may be continued and determined as if the Converts' Marriage Dissolution Act, 1866 (21 of 1866), or such corresponding enactment, as the case may be, had not been repealed.

(3) The provisions of sub-section (2) shall be without prejudice to the provisions contained in section 6 of the General Clauses Act, 1897 (10 of 1897), which shall also apply to the repeal of the corresponding enactment

STATEMENT OF OBJECTS AND REASONS

The Convert's Marriage Dissolution Act, 1866, provides that when a husband or wife changes his or her religion to Christianity and if in consequence of such change the other party to the marriage deserts or repudiates the convert, the convert can move the court for a decree dissolving the marriage, and the court may pass such a decree after complying with the procedure prescribed therein. During the examination by the Law Commission of the law relating to marriage and divorce among Christians in India, this Act was criticised as being discriminative in character in that it applied only to cases of conversion from Hinduism and it gave relief only in cases of conversion to Christianity. In its 18th Report the Law Commission has recommended the replacement of this Act by a law applicable to all converts uniformly which would confer on a convert the right to have the marriage contracted before conversion dissolved on such terms as might be just and proper

This Bill seeks to implement the 18th Report of the Law Commission The notes on clauses explain in detail the salient features of the Bill.

NEW DELHI, A. K. SEN.

The 24th August 1962.

Notes on Clauses.

Clause 1.—The existing Act, namely the Converts' Marriage Dissolution Act, 1866, does not extend to the Union Territory of Manipur. As there is no longer any justification for its exclusion, the proposed law will now extend to the whole of India except Jammu and Kashmir

Clause 2—The expression "conversion" has been defined to include a mere renunciation of religion not followed up by conversion to another religion

Clause 3.—The object of this clause is to provide that the conversion of a spouse will not by itself put an end to the marriage The law at present is that conversion from one monogamous religion to another does not *ipso facto* put an end to the marriage. Where the conversion is from a monogamous religion to a polygamous religion, the law is equally well settled that such conversion will not operate as a dissolution of the marriage. Under section 4 of the Dissolution of Muslim Marriages Act, 1939, the renunciation of Islam by a married Muslim woman or her conversion to another faith does not by itself operate to dissolve her marriage Where a Muslim husband changes his religion the law is, however, different, and this clause, while largely declaratory of the existing law, seeks to make a slight modification in Muslim law for the sake of uniformity.

Clause 4.—The object of this clause is to ensure that merely by conversion a person is not enabled to contract a second marriage so long as the marriage contracted before the conversion is not duly dissolved In most cases the personal laws now applicable prohibit bigamy and in such cases this clause will be merely of a declaratory nature. Where, however, the personal law does not prohibit bigamy, this clause will afford the non-converted spouse a much needed relief

Clause 5.—This clause provides that the only method by which a convert can get his pre-conversion marriage dissolved would be under this law.

Clause 6.—This follows sections 4 and 5 of the Converts' Marriage Dissolution Act, 1866, but the

requirement that the desertion or repudiation must have been for the space of six continuous months has been omitted as unnecessary. Further, the word "desertion" has also not been used as it is inappropriate in the context of the relief which is based not on any matrimonial offence of the non-converted party but on the ground of conversion not being acceptable to that party. Instead, the words "refuses to cohabit" have been used A minimum interval of two years between the conversion and the petition is provided for the purpose of discouraging sham conversions

Clause 7 —This clause provides that the parties to a decree for divorce may re-marry once the decree has become final and is on the lines of the corresponding provision in other matrimonial laws

Clause 8.—Subject to the restriction contained in clause 9, this clause seeks to define the district court which will have jurisdiction in respect of petitions under the proposed law. The respondent's residence is the main basis but provision is made to meet other cases as in the Hindu Marriage Act, 1955, and the Special Marriage Act, 1954.

Clause 9.—Following sections 4 and 5 of the Convert's Marriage Dissolution Act, 1866 (read with the definitions of "husband" and "wife" in that Act), and in accordance with well-accepted principles of private international law, jurisdiction under this law will be exercised only if the parties are domiciled in this country

Clauses 10, 11 *and* 12 —These are modelled mainly on the corresponding provisions in the Hindu Marriage Act, 1955, and the Special Marriage Act, 1954

Clause 13.—This clause deals with permanent alimony and maintenance and is modelled, subject to important qualifications, on the corresponding provisions in the Special Marriage Act, 1954, and the Hindu Marriage Act, 1955 It is considered that only the respondent in the main proceedings should be entitled to relief under this Clause So far as the petitioner is concerned, he or she would have instituted proceedings on account of his or her own act, and hence it is not desirable that the petitioner should be given

a right to claim maintenance from the other party Sub-clause (2) makes a special provision that unless the court decides otherwise, a decree for dissoultion of marriage should be passed, where the petitioner is the husband, only after suitable orders have been made for the maintenance of the wife, the reason being that once a decree for dissolution has been passed, the husband will be free to marry again and he might thereafter become indifferent and remiss in carrying out his obligations to the divorced wife and it would work great hardship if she were to hang on to the court for enforcing her rights

Clause 14.—Sub-clause (1) is intended to enable the court to pass orders relating to the disposal of property presented to the parties at the time of marriage and belonging to them jointly It is based on a similar provision in the Hindu Marriage Act, 1955 Sub-clauses (2) and (3) are intended to empower the court to deal with properties settled before or after the marriage of the parties, and are based on similar provisions in the Indian Divorce Act, 1869

Clause 15 —Sub-clause (1), modelled on similar provisions in other Acts dealing with dissolution of marriage, makes comprehensive provisions with respect to custody, maintenance and education of minor children Sub-clause (2) embodies a special provision conferring a preferential right to the custody of the children on the non-converted spouse subject to the paramount consideration of the welfare of the children

Clause 16 —This clause makes the usual provisions as to execution of decrees and orders

Clause 17 —This provides for appeals against decrees and orders It has been modelled on the corresponding provisions of other Acts relating to marriage and divorce, with the difference that decrees and orders are made appealable as "decrees" and not as "orders" as orders are not normally appealable under the Civil Procedure Code Under the Converts' Marriage Dissolution Act, 1866, no provision has been made for any appeal, thuogh a provision has been made for a reference of the case to the High Court. It is felt that an appeal would be more appropriate and convenient than a reference.

Clause 19 —This clause, based on section 21 of the Converts' Marriage Dissolution Act, 1866, embodies a useful presumption

Clause 20.—This clause embodies the substance of section 27 of the Converts' Marriage Dissolution Act, 1866, and is intended to safeguard the status and property rights of the children of the marriage.

Clause 21 —This clause is intended to ensure that change from one sect to another within the fold of Hindu Law will not be deemed to be conversion

Clause 22 —This clause excludes marriages solemnised under the Special Marriage Act, 1954, from the purview of the proposed legislation. Since a difference of religion does not come in the way or a marriage under that Act, any subsequent change of religion should not also have any effect on a marriage contracted under that Act.

Clause 23 —Seeks to repeal the Converts' Marriage Dissolution Act, 1866, with the necessary saving provisions.

MEMORANDUM REGARDING DELEGATED LEGISLATION.

Clause 18 of the Bill, like section 62 of the Indian Divorce Act, 1869 and section 41 of the Special Marriage Act, 1954 authorises the High Court to make rules for carrying into effect its provisions. Chapter III lays down in detail the procedure to be followed by that court in matters arising under the proposed legislation, but rules may still be necessary to supplement its provisions, as for example, in respect of matters relating to the form of petitions, the particulars to be contained therein, the payment of costs, etc.

The delegation of legislative power is of a normal character

M N KAUL,
Secretary.